

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CIVIL APPEAL STATEMENT

Please TYPE. Attach additional pages if necessary.

11th Circuit Docket Number: 22-13051-J

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| Caption: In re: Blue Cross Blue Shield Antitrust Litigation (MDL No. 2406) | District and Division: <u>Northern District of Alabama</u> Name of Judge: <u>Judge R. David Proctor</u> Nature of Suit: <u>Private Civil; Federal Question</u> <hr/> Date Complaint Filed: <u>01/08/2013 (date transferred to N.D. AL.)</u> District Court Docket Number: <u>2:13-cv-20000-RDP</u> <hr/> Date Notice of Appeal Filed: <u>09/07/2022</u> <input type="checkbox"/> Cross Appeal <input checked="" type="checkbox"/> Class Action <hr/> Has this matter previously been before this court? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide (a) Caption: <u>Blue Cross & Blue Shield Asso. v. Joseph Ackerson, et al</u> (b) Citation: <u>No. 18-90020-E, 2018 WL 7152887 (11th Cir. Dec. 12, 2018)</u> (c) Docket Number: <u>No. 18-90020</u> |
|--|--|

| For Appellant: | Attorney Name | Mailing Address | Telephone, Fax, Email |
|---|-------------------------------|-----------------|-----------------------|
| <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) | Please see attachment. | | |

| For Appellee: | Attorney Name |
|---|-------------------------------|
| <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input checked="" type="checkbox"/> Other (Specify) | Please see attachment. |

Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.

| Jurisdiction | Nature of Judgment | Type of Order | Relief |
|--|---|---|---|
| <input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> US Plaintiff <input type="checkbox"/> US Defendant | <input type="checkbox"/> Final Judgment, 28 USC 1291 <input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1) <input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b) <input type="checkbox"/> Interlocutory Order, Qualified Immunity <input type="checkbox"/> Final Agency Action (Review) <input checked="" type="checkbox"/> 54(b) | <input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Default Judgment <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment/Bench Trial <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Judgment/Directed Verdict/NOV <input type="checkbox"/> Injunction <input checked="" type="checkbox"/> Other <u>FRCP 23(e) Final Approval Order</u> | Amount Sought by Plaintiff: \$ _____ Amount Sought by Defendant: \$ _____ Awarded: <u>\$ 2.67 billion</u> to <u>Class Action Settlement Fund</u> Injunctions: <input type="checkbox"/> TRO <input checked="" type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Granted <input type="checkbox"/> Denied |

Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression? ☒ Yes ☐ No

What is the issue you claim is one of First Impression? This case is the first federal appeal to raise the following issue under the new provision of Fed. R. Civ. P. 23(e)(2)(D), as amended in 2018: Does the class action settlement approved by the district court treat class members equitably in relation to each other when it binds all class members to a complete release while giving 93.5% of the settlement fund to the Fully Insured Subclass and only 6.5% to the Self-Funded Subclass based on a much shorter limitations period?

- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute? ☒ Yes ☐ No

If Yes, provide

- (a) Case Name/Statute It will turn in part on application of *Holmes v. Continental Can Company*.
 (b) Citation 706 F.2d 1144 (11th Cir. 1983).
 (c) Docket Number if unreported _____

- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that

- (a) Arises from substantially the same case or controversy as this appeal? ☒ Yes ☐ No
 (b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal? ☒ Yes ☐ No

If Yes, provide

- (a) Case Name In re: Blue Cross Blue Shield Antitrust Litigation (MDL No. 2406)
 (b) Citation _____
 (c) Docket Number if unreported 22-13052
 (d) Court or Agency _____

- (4) Will this appeal involve a conflict of law

- (a) Within the Eleventh Circuit? ☐ Yes ☒ No
 (b) Among circuits? ☐ Yes ☒ No

If Yes, explain briefly:

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:

1. Whether the district court abused its discretion by approving the Class Settlement and Appointment of Settlement Administrator, in the absence of evidence justifying the 93.5%-to-6.5% settlement allocation ratio and in violation of the procedural and substantive requirements of Federal Rule of Civil Procedure 23(e)(2), as amended in 2018, and the binding authority of *Holmes v. Continental Can Co.*, 706 F.2d 1144 (11th Cir. 1983).
2. Whether the District Court erred by finding that the Self-Funded settlement class period only spanned five years, as opposed to the twelve-and-a-half-year Fully Insured class period.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND

SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 29th DAY OF September, 2022.

Virginia Nicole Adamson

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